Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

No. 06-712

IN THE
SUPREME COURT OF THE UNITED STATES

WILLIAM H WYTTENBACH (a trust)
Petitioner

v.

COMMISSIONER OF REVENUE
Respondent

ON PETITION OF A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

William H. Wyttenbach, Trustee
WILLIAM H WYTTENBACH (a trust)
c/o: 2000 South McColl Road, B 173
McAllen, Texas 78503
(956) 342-6188

QUESTIONS PRESENTED

1. Did the appeals court err by dismissing our appeal for lack of jurisdiction based on the Tax Court's spurious allegation that the Petition was not filed by the same party named in the Notice of Determination, when the facts show Petition was filed by the same party named in the Notice of Determination, which facts Petitioner can easily prove?
2. Did the appeals court err in failing to consider the facts in the light most favorable to Appellant/Petitioner?
3. Did the appeals court err by failing to review Appellant's case de novo as is required for summary dismissals?
4. Did said ruling violate Appellant's constitutionally secured right to due process?
5. When the appeals court presupposed what their ruling would be if they were to have heard the case, did they err in their presupposition by accepting as fact the tax court's ruling that the taxpayer in this case is someone other than Petitioner even though that ruling directly contradicts the facts of, and the nature of, this case?
6. When the appeals court presupposed what their ruling would be if they were to have heard the case, did they err in their presupposition by ignoring the Standard for Review for Summary Dismissal cases as set by this court?

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IN THE SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner, WILLIAM H WYTTENBACH (a trust), respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit below.

OPINIONS BELOW

The per curiam opinion of the United States 5th Circuit Court of Appeals appears at Appendix A and is not precedential. The Tax Court's Order of Dismissal for Lack of Jurisdiction appears as Appendix B. The United States 5rd Circuit Court of Appeals' Denial of Petition for Rehearing appears at Appendix C.

JURISDICTION

The date on which the United States Court of Appeals decided this case was August 31st , 2006. Petition for rehearing was denied by United States Court of Appeals on October 4th , 2006. The basis for jurisdiction in the court of first instance is: Title 26 § 7482(a).

The jurisdiction of this Court is invoked under the Constitution and Title 28 § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.

U.S. Constitution, Amendment I provides in pertinent part: "Congress shall make no law…abridging…the right of the people peaceably to…petition the government for a redress of grievances."

U.S. Constitution, Amendment V provides in pertinent part: "No person shall…be deprived of life, liberty, or property, without due process of law…"

The United States Tax Court's Rules at rule 24(b) states, "An estate or trust may be represented by a fiduciary thereof."

STATEMENT OF THE CASE

This case was originally filed in the tax court to contest a bogus Notice of Determination, (hereinafter, "NOD"), based upon bogus Notices of Deficiency, which were issued in error and containing misleading, false and or incomprehensible information.

The tax court, contrary to both the facts in this case and the Summary Dismissal Standard for Review (set by this court), dismissed the case for lack of jurisdiction alleging Petitioner is not the taxpayer named on said bogus NOD.

Petitioner filed an appeal to the 5th Circuit Court of Appeals to contest the tax court's erroneous ruling.

The appeals court also gave a presupposed opinion of what their disposition would have been on the case had they heard it, alleging they would have summarily dismissed the case for the same erroneous cause the tax court alleged.

Prior to said ruling, IRS created Notice of Federal Tax Liens in regard to funds they allege the taxpayer owes.

On September 19, 2006, Petitioner petitioned the appeals court for a panel rehearing noting errors in its opinion;

The appeals court denied the petition for rehearing on October 4th, 2006.

Wherefore, Petitioner filed this Petition with the United States Supreme Court.

REASONS FOR GRANTING THE PETITION

This court should grant Petitioner's petition at the debt of Justice and to enforce its own rules, which were set as a Standard for Review of cases both in the trial courts and for appeals; thus, when the lower courts err this court must preserve Justice with its rules.

Therefore, we will show this court the appeals court's errors with sufficient evidence to determine that the debt of justice requires this court to grant Petitioner's Petition.

The appeals courts errors are as follows:

1. The appeals court erred by dismissing our appeal for lack of jurisdiction when jurisdiction is clearly established.

The court erred by failing to acknowledge they had jurisdiction to hear this case. Appellant demonstrated to the trial court that the trial court indeed had jurisdiction over this case. The trial court erred when they incorrectly ruled the original petition was filed by someone other than the party to whom the NOD was addressed. The trial court erred by ignoring the material facts of the case to make its order to dismiss. The trial court was made aware of its errors and erred again by so ruling in spite of its errors. The trial court erred by dismissing for lack of jurisdiction when jurisdiction was properly established with in accord with the rules of the court and the necessities of the standards for review of summary judgment cases, which the trial court did not follow.

The trial court erred in their refusing to fully acknowledge Tax Court rule of practice and procedure, Rule 60 (a). The case was brought to the trial court *"by and in the name of the person whom the Commissioner determined the deficiency or liability or by and with the full descriptive name of the fiduciary entitled to institute a case on behalf of such person."* (Appendix B). In Appendix B it further stated properly that on the original petition captioned *"William H. Wyttenbach, Petitioner* [Petitioner demonstrated its issued Social Security Trust account number: 238-02-0973 and its IRS issued TIN: 62-6375654], *v. Commissioner of the Internal Revenue, Respondent"*.

The original petition was clearly signed by petitioner's fiduciary, William H Wyttenbach, TTEE; which as the fiduciary of the person named on the NOD was *"entitled to institute a case on behalf of such person."*; in this case, the Social

Security Administration (hereinafter, "SSA"), created person, the WILLIAM H WYTTENBACH (a trust), who is the only person or individual named on the NOD and on the original petition to the trial court. In fact, the party named on the NOD is the exact same and only party that filed the original petition.

The sole party in this case, Petitioner (a trust), filed with the trial court on January 3rd, 2006 our *"AMENDED OBJECTION and RESPECTIVE MOTION FOR CHANGE OF ORDER IN THE NATURE OF A WRIT OF ERROR CORAM NOBIS."*

The trial court erred due to its lack of understanding of Petitioner's factual nature as a SSA created trust/artificial person. Pages one through six of the above Writ of Error Coram Nobis, the material facts were presented that the factual nature of Petitioner whom the Respondent identified on the NOD, identified WILLIAM H WYTTENBACH (a trust), and such NOD failed to identify any man or other person on said NOD. On page six of the same Writ of Error Coram Nobis, in the fourth paragraph;

> *"Therefore, Petitioner exists as it was created and Accepted from its beginning and the name and Social Security Number on said Social Security card uniquely identifies only one individual person-Petitioner. The use of said Social Security Number has always uniquely identified Petitioner as opposed to any other person of the same or similar name. The unique individual person so identified is not, and cannot be a man."*

From the last paragraph on page six, through the end of the second paragraph on page eight; clearly and factually demonstrated to the trial court, as to why it is functionally impossible for a man to be an individual or a party in this case. The trial court erred by ignoring the material facts presented.

In Petitioner's "Amended Petition", dated December 30, 2005, on page one, under II. Parties (1) (c) it is stated, *"Trustee: William Hayes Wyttenbach, Trustee. 1) The person lend-*

ing consciousness and physical capacity to Petitioner's Trustee capacity is a Stewardship in the Kingdom of Israel.) (Said Stewardship is not a party in this case).

The trial court erred in their "Order" dated, October 19, 2005 in its opinion that, *"notice of determination upon which this case is based was issued to William H Wyttenbach in his individual capacity."* Petitioner is a trust and a trust has no gender and there is no man or other person that is a party in this case. The Respondent raised a contest to the material facts of this information and nature of Petitioner.

Whether contest comes from Respondent's attorney or from a Judge; whether they believe it is the way it is from their past experiences or not; in this case that can be different, the records and material facts prove the nature of this party.

The facts and records were presented to the trial court in petitioner's, "MOTION TO VACATE ORDER DATED OCTOBER 18, 2005." On page six, numbers three through ten the following is stated:

3. *Therefore the relationship SSA created is a Trust relationship, by definition. They created the relationship without a written contract, therefore, it was created in construct;*
4. *When Petitioner's name and number is used, the party related in any subsequent relationship is that of the trust.*
5. *Subsequent to the Petitioner's creation, Petitioner generated a Simple Social Security Trust Indenture for the purpose of securing the factual nature of the agreement as it was accepted by all parties from its origin. This Social Security Trust Indenture is on file in the office of its Creator (SSA), is not a document of origin rather it is a document that confirms Petitioner's origin and existence. Said Indenture is available, should you need to confirm these facts further.*
6. *Said Indenture removed the constructive nature of the trust.*

7. *The Trustee of Petitioner is defined as William Hayes Wyttenbach, TTEE, which definition represents the person lending consciousness and physical capacity to Petitioner's Trustee capacity, which person is a Stewardship of the Kingdom of Israel. (Said Stewardship is not a party in this case.) Petitioner borrowed said Stewardships consciousness and physical capacity from the Stewardship in the kingdom of Israel. SSA made an offer and it was accepted by the Stewardship. Petitioner borrowed consciousness and physical capacity from this Stewardship..*
8. *The Petitioner (a trust) uses its borrowed consciousness and physical capacity, in its Trustee capacity; therefore, the Petitioner signed the Social Security card in its Trustee capacity.*
9. *Whereas, the Trustee capacity is consciousness created in contract, the Trustee is by definition a Corporation Sole. Though the provision for consciousness can be created in contract and assigned to a Trustee capacity the actual ability to execute decisions and the physical capacity to perform functions must be borrowed. Until a trust's Creator contracts with some person willing to lend its actual consciousness and physical capacity (hereinafter "CPC"), to the trust, the trust can perform no actual function. The Creator finds a person willing to so lend their actual CPC to the Trust, which CPC the Creator places in the Trustee capacity of the Trust. Petitioner's Trustee is a corporation sole and as such the Trustee has corporate immunity. The Trustee cannot act for itself and can only act for the Trust; in this case, the Petitioner for whom the contractual consciousness was created.*
10. *The Trustee capacity was created so that the Petitioner (a trust) can function. The Respondent and United States Tax Court must realize: when the Trustee acts in accord with its creation it is the Petitioner that is acting and not the person lending CPC to it.*

The submission of Petitioner's Petition to the United States Tax Court, is solely the Trust (Petitioner).

Petitioner demonstrated in the same instrument cited above that petitioner is a qualified entity to file its petition to the United States Tax Court, therefore this trial court had jurisdiction to hear this case.

United States Tax Court's Rules at rule 24(b) specifically allows trusts to proceed in Tax Court (without an attorney) through their trustees which is exactly how this case was brought; the rule states, "An estate or trust may be represented by a fiduciary thereof." Petitioner did so file the original petition and to the trial court Petitioner demonstrated in the above referenced instrument the trial court's jurisdiction in page eight, number 12 through 18 as follows:

12. *Under United States Tax Code definitions at Title 26, Subtitle F, Chapter 79, Section 7701, we find:*
    a. *"Person: The term 'person' shall be construed to mean an individual, **a trust**, estate, partnership, association, company or corporation."*
    b. *"Fiduciary: The term 'Fiduciary' means a guardian, **trustee,** executor, administrator, receiver, conservator, or any person acting in any fiduciary capacity for any person."*
13. *Petitioner is a person under the U.S. Tax Code, and as such Petitioner is a person which is a taxpayer, and as such, Petitioner is a qualified entity to file its petition in the U.S. Tax Court.*
14. *Petitioner contracts with employers to provide services. Petitioner has operating expenses, fiduciary fees and other obligations of expenses. When Petitioner has employment conditions that generate net capital gains, after such expenses, the FICA contributions are made and payments of any applicable income taxes owed.*
15. *Petitioner's name and its Creator issued social security number and its social security card, are used in*

employment, banking, and/or industry. As such, Petitioner has functioned solely in business endeavors to generate assets for its Beneficiary: United States Government.

16. *Social Security General Trust Fund has records showing, $125,000.00 plus in distributions to its Beneficiary, the United States Government.*
17. *Said Stewardship's expenses (fiduciary fees) are met as they occur, as per Petitioner's original constructive agreement with said Creator.*
18. *Petitioner presents the above detailed facts to the Respondent and the United States Tax Court to fully establish the factual nature of Petitioner in the United States Tax Court, in this Motion to the United States Tax Court.*

Therefore, Petitioner's instruments presented to the United States Tax Court clearly demonstrated to this trial court that they indeed in fact had jurisdiction to hear Petitioner's case based on U.S. Tax Court Rule 60 (a) as a trust acting through its trustee capacity; as well as, Petitioner being a taxpayer under Title 26, United States Tax Code.

Therefore, jurisdiction was established in the trial court. The trial court was shown its errors and erred in dismissal of Petitioner's case for lack of jurisdiction and the false allegation of improper party.

Upon failure of the trial court to properly recognize its jurisdiction in this case and their error to recognize the proper party in this case; Petitioner timely filed its appeal to the United States Court of Appeals Fifth Circuit. The United States Court of Appeals Fifth Circuit had jurisdiction to hear our case as well.

Appellant's petition and briefs provided material facts to the appellate court. Appellant's Brief, page 12 addressed that,

1) The Rules of Evidence require that a document must speak for itself; wherefore, said NOD and all past Notices of Deficiencies was addressed to

<u>WILLIAM H WYTTENBACH,</u> which in fact is Appellant's name and is not the name of a man.

a. *Said past NOD and Notices of Deficiencies were not addressed to said man.*
b. *Appellant has no General Partnership with any man.*
c. *Said NOD and all past Notices of Deficiencies further identified its addressee by using Appellant's Taxpayer Identification number (hereinafter "TIN"), SSN: 238-02-0973.*
d. *Said TIN referenced on said NOD and all past Notices of Deficiencies has no relation with said man.*

The Appellant's Brief pages twelve through fourteen, with letters "e" through "i", further demonstrated that the proper and only party in this case cannot be a man. In Appellant's Reply Brief on page seven, second paragraph, *"Appellant is a person and or individual that is a taxpayer whom falls under the jurisdiction of Title 26 U.S.C., Sections 6320(c) and 6330 (d); and as such has every right to seek due process of law under Title 26, U.S.C.* Starting in paragraph three of the same page, *"The USTC allows a fiduciary to present a trust in its legal matters in Tax Court ("Tax Ct. Rule 60 (c). Appellant is the only person who filed the petition to the USTC; and no other party or person is a party in this case."*

In Appellant's Reply Brief from pages fifteen through page 17, Appellant further demonstrated the Trust's (Appellant's) written indenture (made secure the Trust from its constructive nature), was detailed. On page sixteen, number three, *"Said Indenture was recognized as accurate by Creator (SSA) and remains on file [as a matter of record] with said Creator (SSA).*

The Appellate court erred by failing to hear the only issue that was before them which was the jurisdictional issue. The Appellate court simply incorrectly assumed that the trial

court's allegation of lack of jurisdiction and improper party were factual, when in fact, the trial court's allegations were false. The Appellate court had the duty to review the jurisdictional issue de novo, which they erred by failing to do so.

2. The appeals court erred upon failing to conduct their appeal of appellant's case de novo.

When the appellate court conducts a de novo review of the lower court rulings, as is required by the Standard for Review for summary styled dismissals (see *East Wind Indus. v. United States, 196 F 3d 499 (1999),* the court considers the case as if the lower court's ruling did not exist and reviews the case as if it were the trial court to determine whether or not there exists a genuine issue of material fact.

Therefore, denying Appellant-Petitioner the right to have a de novo trial on our appeal is a direct violation of our due process rights and having our appeal tried de novo based on its merits. The Appellate court had only one issue to hear and that was the matter of jurisdiction only. They failed to review that one issue of jurisdiction de novo.

3. The appeals court erred by ignoring the Standard for Review for summary dismissal cases.

Such summary review dismissals must adhere to the Standards for Review. Every such case must be heard in the light most favorable to appellant-petitioner. *(Cruz v. Beto, 405 U.S. 319, 322 (1972); Barron v. Reich, 13 F.3d 1370, 1374 (9th Cir. 1994).* In light of the material facts presented to both the trial court, and the following dismissal by the appeals court; it is evident that appellate court did not rule in the light most favorable to appellant-petitioner. This is another necessity for this petition of Writ of Certiorari. Summary dismissal must be reviewed accepting the material facts of the case as they were presented by appellant. "Complaint should not be dismissed unless it appears beyond doubt that plaintiff-appellant) can prove no set of facts in support of his claim for relief." *(Conley v. Gibson, 355 U.S. 41, 45-46 (1957).* Herein lies where appellant-petitioner has been denied justice. Appellant has in fact presented facts in support

of our claim for relief; however, the U.S. Tax Court and U.S. Court of Appeals have ignored the presented facts due to their opinions and not findings of facts and conclusions of law. Appellant-Petitioner can prove and has proved each of the facts stated in the U.S. Tax Court petition; as well as the material facts presented in Appellant's Brief and Reply Brief as presented to the Appellate court. These material facts have been ignored and the Appellate court erred by ignoring the Standard for Review of summary dismissals.

4. The appeals court erred in its ruling by denying appellant-petitioner its constitutionally secured right of redress of our grievances.

a. In consideration of the numbered points above (in this section), to now, only on appeal, forbid Petitioner from proceeding violates Petitioner's constitutionally secured right to petition for redress of grievances (Amendment I), right to due process of law (Amendment V) and right of access to the courts (Amendment VII).

Wherefore, this error by the appeals court was such a departure from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's supervisory power; and, this court should allow Petitioner to proceed without an attorney and either hear this case de novo based on its merits, or remand the case to the appeals court for trial de novo based on its merits, or remand the case to the tax court for trial based on it merits.

b. This court has ruled:

"there are constitutional limitations upon the power of courts, even in aid of their own valid processes, to dismiss an action without affording a party the opportunity for a hearing on the merits of his cause" *Societe Internationale Pour Participations Industrielles et Comme...*, (357 U.S. 197);

The appeals and trial court demonstrated by their actions rote application of court rules that clearly deprive Petitioner of its right to petition for redress of grievances

(Amendment I), right of due process of law (Amendment V.

Wherefore, this error by the appeals court was such a departure from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's supervisory power; and allow Petitioner's petition for Writ of Certiorari.

5. When the appeals court presupposed what their ruling would be if they were to have heard the case, they erred in their presupposition by accepting as fact the tax court's ruling that the taxpayer in this case is someone other than Petitioner even though that ruling directly contradicts the facts of, and the nature of, this case.

The appeals court stated, *"Although if we had jurisdiction to entertain this appeal, we would summarily affirm the judgment of the United States Tax Court dismissing it."* The United States Tax Court falsely alleged lack of jurisdiction on *"the ground of improper party."*; however:

a. As was shown in Appellant's Reply Brief on page 8, Petitioner was created by contract with SSA in accord with the Social Security Act of 1935, et. seq (hereinafter, "SS Act"), the elements of which were explained in detail;
b. As was noted in Appellant's Brief on Page 12, Petitioner is a trust that is identified at least whenever its name and or its unique SSN are used;
c. As was shown in Appellant's Brief on Pages 14, 15, and 16, it is obvious that Respondent issued said bogus NOD to Petitioner and that Petitioner is the person who filed this suit:
    1) Both said bogus NOD and the court documents filed by Petitioner have Petitioner's name, WILLIAM H WYTTENBACH, and no other person's name,
    2) Both said bogus NOD and the court documents have only Petitioner's Taxpayer Identification Number, specifically its SSN: 238-02-0973,

which number was not issued to a man and does not represent any man; and,

3) Both said bogus NOD and the court documents only detail or relate to funds earned only by Petitioner;

d. As was raised in Appellant's Brief said bogus NOD and said Petitioner identifying court documents speak for themselves and cannot be changed by Respondent's unsupported spurious allegations or opinion;

e. SSA has no contest with Petitioner's nature as they created it; which is evidenced by SSA's amending SSA records in accord with the Administrative Procedures Act to include a formal "trust indenture" as an Instrument of Acknowledgment as was described in Petitioner's Motion to Vacate Order dated, October 19, 2005;

f. Respondent is not a party to the agreements between Petitioner and its creator, so Respondent's spurious unsubstantiated opinion regarding that relationship and Petitioner's nature is irrelevant to the case and only raises a contest of the facts, which contest prescribes trial and rules out any possibility of a lawful summary judgment;

g. Respondent has no right or ability to challenge or change the nature of said agreements between Petitioner and SSA or the nature of the parties to said agreements;

h. The material facts of the case and SSA records show Respondent's spurious opinion that Petitioner is not the proper party to bring this suit is false;

i. The mere allegation that a man was numbered as a result of the relationship between Petitioner and SSA goes against both the SS Act, which did not authorize SSA to number any man, and God's Law, which forbids the Children of Israel from accepting any such number, see Genesis 13:16; 2 Samuel 24:10;

j. Were SSA to offer any such number to any man bound by covenant with God under God's Laws, any agreement to accept any such number would subject the man to potential eternal suffering; therefore, the person that lends consciousness and physical capacity to Petitioner would never agree to accept such a relationship with SSA or with any other party. To make such an allegation is ridiculous!

Whereas, the appellate court's presupposed implied ruling was made in error contrary to the facts of this case, this instant court should consider and rule on this appeal recognizing Petitioner is the proper party to bring this suit and in hearing this appeal this court could elect to hear this case de novo, or, remand this case instructing the appellate and or trial court to hear such matters considering Petitioner is the proper party to bring this suit or at least offering a trial of the facts alleged in the case to substantiate the same before making any such summary dismissal.

Wherefore, Petitioner asks this court to reverse the appeals court's errors and remand the case to the tax court for a trial of the facts, or the instant could elect to hear this case de novo itself.

CONCLUSION

In consideration of the fact that this Petition shows the appeals court's errors were such a departure from the accepted and usual course of judicial proceeding as to call for the direct exercise of this Court's supervisory power to rule on the issues presented herein; wherefore, this petition for a writ of certiorari should be granted at the debt of justice for the causes shown above.

Respectfully submitted,

William H Wyttenbach, TEE

WILLIAM H WYTTENBACH (a trust)
c/o 2000 South McColl Road, B 176
McAllen, Texas 78503
Phone: 956-342-6188

APPENDIX A

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT
NO. 06-60152

WILLIAM H WYTTENBACH (Trust),
Petitioner
v.
COMMISSIONER OF INTERNAL REVENUE

On Appeal from the United States Tax Court
(T.C. No. 10711-05)
Tax Court Judge: Honorable Peter J. Panuthos

Before: SMITH, WIENER, and OWEN, CIRCUIT JUDGES
(Filed: August 31, 2006)

OPINION

PER CURIAM

Although if we had jurisdiction to entertain this appeal, we would summarily affirm the judgment of the United States Tax Court dismissing it, we do not have jurisdiction. Accordingly, for lack of jurisdiction, this appeal is DISMISSED.

Pursuant to 5th Cir. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Cir. R. 47.5.4.

APPENDIX B

UNITED STATES TAX COURT
Washington, DC 20217

Docket no. 10711-05

WILLIAM H WYTTENBACH (TRUST),	)
Petitioner	)
v.	)
COMMISSIONER OF INTERNAL REVENUE,	)
Respondent	)

Order of Dismissal for Lack of Jurisdiction

On May 19, 2005, respondent issued to William H Wyttenbach a notice of determination concerning a proposed collection action for the taxable years 1995 to 2001. The notice of determination identifies the taxpayer by his individual social security number.

On June 13, 2005, the Court received and filed a petition captioned "William H. Wyttenbach, Petitioner v. Commissioner of the Internal Revenue, Respondent. The petition is signed "William H.Wyttenbach, TTEE".

On September 6, 2005, petitioner filed a Motion for Leave to File Amended Petition. Respondent filed an Objection to petitioner's motion. On September 6, 2005, petitioner lodged with the Court an Amended Petition which states in pertinent part that the petitioner in this case is a trust. Petitioner's motion was called for hearing at the Court's motions session held in Washington, D.C. The Court subsequently denied petitioner's motion because the notice of determination in this case was issued to William H. Wyttenbach in his individual capacity.

On October 31, 2005, petitioner filed a Motion to Vacate the Court's Order denying his Motion for Leave to File Amended Petition. The Court denied petitioner's motion to vacate.

On December 5, 2005, petitioner filed a Motion for Re-

hearing. Petitioner continued to assert that the petitioner in this case is a trust and that he is prosecuting this case as a trustee for such trust.

Rule 60(a) provides that a case shall be brought by and in the name of the person against whom the Commissioner determined the deficiency or liability or by and with the full descriptive name of the fiduciary entitled to institute a case on behalf of such person. A review of the petition and petitioner's various submissions to the Court indicate that the petition was not filed by and in the name of the person – William H Wyttenbach - - to whom the notice of determination was issued. Instead, petitioner asserts that the petition was filed by William H Wyttenbach in his capacity as the trustee of a trust. Because the notice of determination upon which this case is based was not issued to a trust, it follows that the petition was not filed by a proper party.

By Order dated December 8, 2005, the Court directed petitioner to file with the Court an amendment to petition, signed by William H. Wyttenbach, in his individual capacity, ratifying and affirming the petition that was filed in this case. See Rule 60(a). Petitioner failed to comply with the Court's Order. Instead, petitioner filed an Amended Petition, and Objection, and an Amended Objection to the Court's Order repeating the argument that the petitioner in this case is a trust.

Accordingly, upon due consideration and for cause, it is

ORDERED that petitioner's Motion for Rehearing is denied. It is further

ORDERED that, on the Court's own motion, this case is dismissed for lack of jurisdiction on the ground the petition was not filed by a proper party.

/s/ Peter J. Panuthos
Peter J. Panuthos
Chief Special Trial Judge

ENTERED: JANUARY 6, 2006

APPENDIX C

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

CASE NO. 06-60152

WILLIAM H WYTTENBACH
PETITIONER-APPELLANT,
V.
COMMISSIONER OF INTERNAL REVENUE
RESPONDENT-APPELLEE

Petition of Review of an Order of the Internal Revenue Service (Tax Ct)

Before SMITH, WIENER, and OWEN, Circuit Judges,

PER CURIAM:

IT IS ORDERED that the petition for rehearing is DENIED

DATED: October 4, 2006

No. _____

_____

In the
SUPREME COURT OF THE UNITED STATES

_____

WILLIAM H WYTTENBACH (a trust)-Petitioner

VS

COMMISSIONER INTERNAL REVENUE- Respondent

PROOF OF SERVICE

I, William H. Wyttenbach, Trustee , do swear or declare that on this date, November 20th , 2006 , as required by the U.S. Supreme Court Rule 29, that I have served the enclosed PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served , by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first class postage prepaid, or by delivery to a third party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

Solicitor General of the United States, Room 5614,
Department of Justice,
950 Pennsylvania Avenue, N.W.,
Washington, D.C. 20530-0001

United States Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.,
Washington, D.C. 20530-0001

Eileen J. O'Connor
Assistant Attorney General, Tax Division
U.S. Department of Justice
Post Office Box 502
Washington, D.C. 20044

Donald L Korb
Chief Counsel
Internal Revenue Service
111 Constitution Avenue, N.W.,
Washington, D.C. 20224

We declare under penalty of perjury that the foregoing is true and correct.

Executed on November, 20, 2006

Wm H Wyttenbach, TTEE

WILLIAM H WYTTENBACH (a trust)
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